

No. 12928

United States
Court of Appeals
for the Ninth Circuit.

ESTATE OF HERBERT B. HATCH, Deceased,
Juanita O. Hatch, Executrix and American
Trust Company, Executor; JUANITA O.
HATCH and HERBERT B. HATCH, JR.,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

AUG 6 1951

PAUL P. O'BRIEN

No. 12928

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for the Ninth Circuit.

ESTATE OF HERBERT B. HATCH, Deceased,
Juanita O. Hatch, Executrix and American
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

FREDERIC D. DASSORI, ESQ.,

JOHN W. STOKES, ESQ.,

M. H. COCHRAN, C.P.A.

For Respondent:

C. W. NYQUIST, ESQ.

Transferred to Judge Murdock 12/5/49

The Tax Court of the United States

Docket No. 18482

JUANITA O. HATCH, Executrix, and AMERICAN TRUST COMPANY, Executor Under the Last Will and Testament of HERBERT B. HATCH, Deceased.

Amended Caption:

ESTATE OF HERBERT B. HATCH, Deceased;
JUANITA O. HATCH, Executrix, and AMERICAN TRUST COMPANY, Executor (See Order 5/24/48),

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1948

May 17—Petition received and filed. Taxpayer notified. Fee paid.

May 19—Copy of petition served on General Counsel.

May 24—Order amending the caption to read “Estate of Herbert B. Hatch, Dec’d.; Juanita O. Hatch, Executrix, and American Trust Company, Executor, Petitioner, v. Commissioner of Internal Revenue, Respondent,” entered.

July 7—Answer filed by General Counsel.

July 7—Request for hearing in San Francisco, California, filed by General Counsel.

1948

July 12—Notice issued placing proceeding on San Francisco, California, calendar. Service of answer and request made.

1949

Mar. 11—Hearing set May 9, 1949—San Francisco, California.

May 10—Hearing had before Judge Van Fossan on merits and joint motion to consolidate with Dkt. Nos. 18483 and 18485 for hearing—granted.

May 10—Joint motion and stipulation of facts filed. Briefs due 7/11/49. Reply briefs 8/10/49.

June 10—Transcript of hearing 5/10/49 filed.

July 11—Brief filed by taxpayer. 7/26/49 Copy served.

July 11—Motion for extension to July 25, 1949, to file brief, filed by General Counsel. 7/12/49 Granted.

July 25—Brief filed by General Counsel. Copy served.

1950

Feb. 23—Opinion rendered, Judge Murdock. Decision will be entered for respondent. Copy served.

Feb. 24—Decision entered. Judge Murdock. Div. 3.

May 19—Motion to vacate judgment filed by taxpayer (consented to). Granted.

Dec. 19—Motion for leave to file copy of attached letters testamentary, consented to, filed by taxpayer. 12/22/50 Granted.

Dec. 28—Decision entered. Judge Murdock. Div. 3.

1951

- Mar. 23—Petition for review by U. S. Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.
- Mar. 23—Proof of service of petition for review filed.
- Mar. 23—Stipulation re consolidation of Dkts. 18482, 18483, 18485 for the purpose of sending to Court only one record on review, filed.
- May 1—Praecipe for record filed by taxpayer with proof of service thereon.
- May 1—Motion to enlarge time to June 21, 1951, to transmit and deliver record filed by taxpayer.
- May 2—Order enlarging time to June 21, 1951, to prepare and transmit the record, entered.

The Tax Court of the United States
Docket No. 18483

JUANITA O. HATCH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1948

- May 17—Petition received and filed. Taxpayer notified. Fee paid.
- May 19—Copy of petition served on General Counsel.
- July 7—Answer filed by General Counsel.

1948

- July 7—Request for hearing in San Francisco, California, filed by General Counsel.
- July 12—Notice issued placing proceeding on San Francisco, California, calendar. Service of answer and request made.

1949

- Mar. 11—Hearing set May 9, 1949—San Francisco, California.
- May 10—Hearing had before Judge Van Fossan on merits. Joint motion to consolidate with Dkts. 18482, 18485—granted. Joint motion and stipulation of facts filed at hearing. Briefs due 7/11/49. Reply briefs due 8/10/49.
- June 10—Transcript of hearing 5/10/49 filed.
- July 11—Brief filed by taxpayer. 7/26/49 Copy served.
- July 11—Motion for extension to 7/25/49 to file brief, filed by General Counsel. 7/12/49 Granted.
- July 25—Brief filed by General Counsel. Copy served.

1950

- Feb. 23—Opinion rendered, Judge Murdock. Decision will be entered for respondent. Copy served.
- Feb. 24—Decision entered. Judge Murdock. Div. 3.
- May 19—Motion to vacate judgment filed by taxpayer. Consented to. Motion granted.
- Dec. 19—Motion for leave to file copy of attached letters testamentary, filed by taxpayer. Consented to. Motion granted 12/22/50.

1950

Dec. 28—Decision entered. Judge Murdock. Div. 3.

1951

Mar. 23—Petition for review by U. S. Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.

Mar. 23—Proof of service filed.

Mar. 23—Stipulation to consolidate Dkts. 18482, 18483 and 18485 for the purpose of sending to Court only one record on review, filed.

May 1—Praecipe for record filed by taxpayer with proof of service thereon.

May 1—Motion to enlarge time to 6/21/51 to transmit and deliver record, filed by taxpayer.

May 2—Order enlarging time to 6/21/51 to prepare and transmit the record, entered.

The Tax Court of the United States

Docket No. 18485

HERBERT B. HATCH, JR.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1948

May 17—Petition received and filed. Taxpayer notified. Fee paid.

1948

Mar. 19—Copy of petition served on General Counsel.

July 7—Answer filed by General Counsel.

July 7—Request for hearing in San Francisco, California, filed by General Counsel.

July 12—Notice issued placing proceeding on San Francisco, California, calendar. Service of answer and request made.

1949

Mar. 11—Hearing set May 9, 1949—San Francisco, California.

May 10—Hearing had before Judge Van Fossan on merits. Joint motion to consolidate with Dkts. 18482 and 18483—granted. Joint motion and stipulation of facts filed at hearing. Briefs due 7/11/49. Reply briefs due 8/10/49.

June 10—Transcript of hearing 5/10/49 filed.

July 11—Brief filed by taxpayer. 7/26/49 Copy served.

July 11—Motion for extension to 7/25/49 to file brief, filed by General Counsel. 7/12/49 Granted.

July 25—Brief filed by General Counsel. Copy served.

1950

Feb. 23—Opinion rendered, Judge Murdock. Decision will be entered for respondent. Copy served.

Feb. 24—Decision entered. Judge Murdock. Div. 3.

1950

- May 19—Motion to vacate judgment filed by taxpayer. Consented to. Motion granted.
- Dec. 19—Motion for leave to file copy of attached letters testamentary, filed by taxpayer. Consented. Motion granted 12/22/50.
- Dec. 28—Decision entered. Judge Murdock. Div. 3.

1951

- Mar. 23—Petition for review by U. S. Circuit Court of Appeals, Ninth Circuit, with assignments of error, filed by taxpayer.
- Mar. 23—Proof of service filed.
- Mar. 23—Stipulation to consolidate Dkts. 18482, 18483 and 18485 for the purpose of sending to Court only one record on review, filed.
- May 1—Praecipe for record filed by taxpayer with proof of service thereon.
- May 1—Motion to enlarge time to 6/21/51 to transmit and deliver record, filed by taxpayer.
- May 2—Order enlarging time to 6/21/51 to prepare and transmit record, entered.

The Tax Court of the United States

Docket No. 18482

JUANITA O. HATCH, Executrix, and AMERICAN TRUST COMPANY, Executor, Under the Last Will and Testament of HERBERT B. HATCH, Deceased,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IRA:90-D:WBH (C:TS:PD:SF:LB) dated February 20, 1948, and as a basis of their proceeding allege as follows:

1. Petitioners Juanita O. Hatch and American Trust Company are the executrix and executor, respectively, under the last will and testament of Herbert B. Hatch, deceased, who died a resident of Stockton, California, on April 9, 1944. Juanita O. Hatch resides at 356 Mountain Ave., Piedmont, California, and American Trust Company has its principal office at 464 California Street, San Francisco, California. The return for the period here involved was filed with the Collector for the first district of California.

2. The notice of deficiency, a copy of which is

attached and marked Exhibit A, was mailed to petitioners on February 20, 1948.

3. The taxes involved are income taxes for the period from January 1, 1944, to April 9, 1944, in the amount of \$3,702.31.

4. The determination of tax set forth in the said notice of deficiency is based upon the following error:

(a) Increase of income from partnership of Herbert B. Hatch, Juanita O. Hatch and Herbert B. Hatch, Jr., doing business as Hatch Chevrolet Company, by \$7,564.10, upon the ground that a part of the gain from the sale of decedent's partnership interest was ordinary income from said partnership, and not a capital gain.

5. The facts upon which the petitioners rely as the basis of this proceeding, are as follows:

5-a. Herbert B. Hatch, Juanita O. Hatch and Herbert B. Hatch, Jr., were copartners doing business under the firm name and style of Hatch Chevrolet Company, at Stockton, California, pursuant to agreement entered into on December 1, 1942, in Stockton, California.

5-b. Said partners carried on a business of selling, distributing, repairing and servicing motor vehicles and motor vehicle parts, both at wholesale and retail.

5-c. Said partners operated under a franchise for the sale of new automobiles and parts

and accessories, from Chevrolet Motor Division of General Motors Corporation.

5-d. The capital investment of Herbert B. Hatch represented 40/75ths of the partnership, the capital investment of Juanita O. Hatch represented 29/75ths of the partnership, and the capital investment of Herbert B. Hatch, Jr., represented 6/75ths of the partnership.

5-e. On or about February 16, 1944, said partners sold a portion of their respective interests in said partnership to King M. Chase and received therefore the sum of \$161,807.77.

5-f. The cost to the partners of their interests in said partnership, for which they received the sum of \$161,807.77 as alleged in Paragraph 5-e, was \$125,138.70.

5-g. The sale as alleged in Paragraph 5-e represented capital assets of the partnership and the difference between the selling price of \$161,807.77 and the cost of \$125,138.70, or \$36,669.07, represented a capital gain to the partnership.

5-h. The decedent, Herbert B. Hatch, realized a capital gain on such transaction of 40/75ths of said \$36,669.07, or the sum of \$19,556.84, of which 50 per cent was recognized.

5-i. Petitioners as executors of decedent Herbert B. Hatch properly reported said gain in the income tax return filed for decedent for

Wherefore, petitioners pray that this Court may the period January 1, 1944, to April 9, 1944.

hear the proceeding and determine that there is no deficiency due for the taxable year January 1, 1944, to April 9, 1944.

/s/ FREDERIC D. DASSORI,
/s/ JOHN W. STOKES,
/s/ M. H. COCHRAN,
Counsel for Petitioners.

State of California,
County of San Francisco—ss.

W. Merriam, being duly sworn, says that he is Trust Officer of American Trust Company, one of the petitioners herein, the executor under the last will and testament of Herbert B. Hatch, deceased, and is duly authorized to verify the foregoing petition; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ W. MERRIAM.

Subscribed and sworn to before me this 14th day of May, 1948.

[Seal] /s/ ANNE F. SWIFT,
Notary Public.

My commission expires Aug. 27, 1951.

State of California,
County of San Francisco—ss.

Juanita O. Hatch, being duly sworn, says that she is one of the petitioners herein, the executrix under the last will and testament of Herbert B.

Hatch, deceased; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ JUANITA O. HATCH.

Subscribed and sworn to before me this 14th day of May, 1948.

[Seal] ANNE F. SWIFT,
Notary Public.

My commission expires Aug. 27, 1951.

EXHIBIT A

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California

Feb. 20, 1948.

Estate of H. B. Hatch, Deceased;
Juanita O. Hatch, Executrix, and
American Trust Co., Executor,
464 California Street,
San Francisco, California.

Gentlemen:

You are advised that the determination of the income tax liability of H. B. Hatch, deceased, for the taxable year ended January 1, 1944, to April 9, 1944, discloses a deficiency of \$3,702.31, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner.

By /s/ F. M. HARLESS,
Internal Revenue Agent
in Charge.

Enclosures:

Statement

Form of waiver

Exhibit A

STATEMENT

San Francisco
 IRA: 90-D:WBH
 (C:TS:PD
 SF:LB)

Estate of H. B. Hatch, Deceased
 Juanita O. Hatch, Executrix and
 American Trust Co., Executor
 464 California Street
 San Francisco, California

Tax Liability for the Taxable Year January 1, 1944, to April 9, 1944

Income tax deficiency\$3,702.31

It is noted that H. B. Hatch died on April 9, 1944.

In making this determination of income tax liability, careful consideration has been given to your protest dated November 5, 1946, and to the statements made at the conferences held on January 13, 1947, and August 18, 1947.

A copy of this letter and statement has been mailed to your representative, John W. Stokes & Co., 1775 Broadway, New York 19, New York, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

Adjustments to Net Income

Net income as disclosed by return page 4, line 3.....\$51,620.71

Unallowable deductions and additional income:

(a) Partnership income 7,564.10

Total\$59,184.81

Nontaxable income and additional deductions:

(b) Capital gain 3,782.06

Net income as adjusted.....\$55,402.75

Explanation of Adjustments

(a) and (b) Income from the partnership of Hatch Chevrolet Company, Stockton, California, is increased by \$7,564.10 due to the fact that a part of the gain from the sale of your partnership interest has been determined to be ordinary income from the partnership, instead of capital gain of \$3,782.06 (50% of \$7,564.12) reported by you.

Total ordinary net income reported on the

partnership return\$75,444.43

Additions to income:

(1) Gain from sale of property other than capital assets.. 14,182.71

Net ordinary income of partnership as adjusted.....\$89,627.14

Your distributive share	\$45,401.14	
Partnership salary	4,500.00	\$49,901.14
		<hr/>
Amount reported on your return.....		42,337.04
		<hr/>
Increase in partnership ordinary income.....		\$ 7,564.10
Net long-term capital gain reported on the partnership return		\$18,334.54
Deductions:		
Sale of assets other than capital assets (1/2 of \$14,182.71).....		7,091.36
		<hr/>
(2) Net long term capital gain of partnership as adjusted....		\$11,243.18
Your distributive share.....		\$ 5,996.36
Amount reported on your return.....		9,778.42
		<hr/>
Decrease in capital gain.....		\$ 3,782.06
(1) Ordinary gain from sale of property other than capital assets is \$14,182.71 as shown by Exhibit A, attached.		
(2) Long-term capital gain from the sale of capital assets of the partnership as shown by Exhibit A, attached.....		\$22,486.36
Taxable at 50%		\$11,243.18

Computation of Alternative Tax

Net income	\$55,402.75
Less: Excess of long-term gain over short-term loss.....	5,996.36
	<hr/>
Ordinary net income.....	\$49,406.39
Less: Personal exemption	500.00
	<hr/>
Income subject to normal tax and surtax.....	\$48,906.39
Normal tax at 3% on \$48,906.39.....	\$ 1,467.19
Surtax on \$48,906.39.....	26,032.60
	<hr/>
Partial tax	\$27,499.79
Add: 50% of excess of net long-term capital gain over net short-term capital loss.....	2,998.18
	<hr/>
Alternative tax	\$30,497.97

Computation of Tax

Net income	\$55,402.75
Less: Surtax exemption.....	500.00
	<hr/>
Surtax net income.....	\$54,902.75

Surtax on \$54,902.75.....	\$30,497.06
Net income	\$55,402.75
Less: Normal tax exemption.....	500.00
Normal tax net income.....	\$54,902.75
Normal tax, 3% of \$54,902.75.....	1,647.08
Total tax	\$32,144.14
Alternative tax	\$30,497.97
Correct income tax liability.....	\$30,497.97
Income tax disclosed by return, page 1, line 6 (Original, Aect. No. 3014400 First California District)....	26,795.66
Deficiency of income tax.....	\$ 3,702.31

Exhibit A

Computation of Ordinary Gain and Long-Term Capital Gain

On your return for the year 1944, there was included your share, as a partner, of the capital gain reported on the partnership return of Hatch Chevrolet Company filed for the period July 1, 1943, to March 31, 1944, derived from the sale of the assets of the partnership, which share was arrived at as follows:

	Partner's Shares		
	H. B. Hatch	Juanita Hatch	H. B. Hatch, Jr.
Total	40/75	29/75	6/75
Proceeds of sale.....	\$161,807.77		
Aggregate bases of business assets	125,138.70		
Gain realized	\$ 36,669.07		
Amount reported as long- term capital gain—			
· 50%	\$ 18,334.54	\$9,778.44	\$7,089.34
		\$1,466.76	

It is held that the transaction constituted a sale by the partnership of assets held pursuant to its business; that the following assets transferred in the sale were not capital assets under section 117, Internal Revenue Code, and gain realized thereon was not long-term capital gain:

Items	Proceeds Realized	Bases to Partnership
Accounts Receivable	\$ 16,541.46	\$19,655.04
Inventory, New Cars	4,288.88	2,953.76
Inventory, Used Cars	9,846.00	7,468.73
Inventory, Parts	50,707.04	40,426.89
Inventory, Accessories	11,602.00	11,664.73
Inventory, Miscellaneous	786.92	1,097.38
Inventory, Tires and Tubes	6,908.05	3,231.11
Totals.....	\$100,680.35	\$86,497.64

Net gain realized reportable as ordinary gain—\$14,182.72.

The amounts of revised gain from the sale of business assets by the partnership, which are includible in your net income, are shown by the following allocation to members of the revised partnership gain:

		Ordinary Gain Reportable in Full	50% Reportable Portion Long-term Capital Gain
H. B. Hatch	40/75.....	\$ 7,564.12	\$ 5,996.36
Juanita O. Hatch	29/75.....	5,483.97	4,347.36
H. B. Hatch, Jr.	6/75.....	1,134.62	899.45
Total.....		<u>\$14,182.72</u>	<u>\$11,243.17</u>

Received and Filed T.C.U.S. May 17, 1948.

Served May 19, 1948.

The Tax Court of the United States

Docket No. 18482

[Title of Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioners, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4(a). Denies the allegations of error contained in subparagraph (a) of paragraph 4 of the petition.

5-a and b. Admits the allegations contained in subparagraphs a and b of paragraph 5 of the petition.

5-c. For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph c of paragraph 5 of the petition.

5-d. Admits the allegations contained in subparagraph d of paragraph 5 of the petition.

5-e. Denies the allegations contained in subparagraph e of paragraph 5 of the petition.

5-f. For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph f of paragraph 5 of the petition.

5-g, h and i. Denies the allegations contained in subparagraphs g, h and i of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioners' appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;

T. M. MATHER,
LEONARD A. MARCUSSEN,
Special Attorneys,
Bureau of Internal Revenue.

Received and filed T.C.U.S. July 7, 1948.

The Tax Court of the United States

Docket No. 18483

JUANITA O. HATCH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IRA:90-D:WBH (C:TS:PD:SF:LB) dated February 20, 1948, and as a basis of her proceeding alleges as follows:

1. Petitioner is an individual and resides at 356 Mountain Ave., Piedmont, California. The return for the period here involved was filed with the Collector for the first district of California.

2. The notice of deficiency, a copy of which is attached and marked Exhibit A, was mailed to petitioner on February 20, 1948.

3. The taxes involved are income taxes for the taxable year ended December 31, 1944, in the amount of \$2,199.38.

4. The determination of tax set forth in the said notice of deficiency is based upon the following error:

(a) Increase of income from partnership of

Herbert B. Hatch, Juanita O. Hatch and Herbert B. Hatch, Jr., doing business at Hatch Chevrolet Company, by \$5,483.98, upon the ground that a part of the gain from the sale of petitioner's partnership interest was ordinary income from said partnership, and not a capital gain.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

5-a. Herbert B. Hatch, Juanita O. Hatch and Herbert B. Hatch, Jr., were copartners, doing business under the firm name and style of Hatch Chevrolet Company at Stockton, California, pursuant to agreement entered into on December 1, 1942, in Stockton, California.

5-b. Said partners carried on a business of selling, distributing, repairing and servicing motor vehicles and motor vehicle parts both at wholesale and retail.

5-c. Said partners operated under a franchise for the sale of new automobiles and parts and accessories, from Chevrolet Motor Division of General Motors Corporation.

5-d. The capital investment of Herbert B. Hatch represented 40/75ths of the partnership, the capital investment of Juanita O. Hatch represented 29/75ths of the partnership, and the capital investment of Herbert B. Hatch, Jr., represented 6/75ths of the partnership.

5-e. On or about February 16, 1944, said partners sold their respective interests in said

partnership to King M. Chase, and received therefor the sum of \$161,807.77.

5-f. The cost to the partners of their interests in said partnership, for which they received the sum of \$161,807.77 as alleged in Paragraph 5-e, was \$125,138.70.

5-g. The sale as alleged in Paragraph 5-e represented capital assets of the partnership, and the difference between the selling price of \$161,807.77 and the cost of \$125,138.70, or \$36,669.07, represented a capital gain to the partnership.

5-h. Petitioner Juanita O. Hatch realized a capital gain in such transaction of 29/75ths of said \$36,669.07, or the sum of \$14,178.70, of which 50 per cent was recognized.

5-i. Petitioner Juanita O. Hatch properly reported said gain in her income tax return filed for the year ended December 31, 1944.

Wherefore, petitioner prays that this Court may hear the proceeding and determine that there is no deficiency due for the taxable year ended December 31, 1944.

/s/ FREDERIC D. DASSORI,

/s/ JOHN W. STOKES,

/s/ M. H. COCHRAN,

Counsel for Petitioner.

State of California,
County of San Francisco—ss.

Juanita O. Hatch, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition, or has had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ JUANITA O. HATCH.

Subscribed and sworn to before me this 14th day of May, 1948.

[Seal] /s/ ANNE F. SWIFT,
Notary Public.

My commission expires Aug. 27, 1951.

EXHIBIT A

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California

Feb. 20, 1948.

Mrs. Juanita O. Hatch,
356 Mountain Avenue,
Piedmont, California.

Dear Mrs. Hatch:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$2,199.38, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner.

By /s/ F. M. HARLESS,
Internal Revenue Agent
in Charge.

Enclosures:

Statement

Form 1276

Form of waiver

Exhibit A

STATEMENT

San Francisco
 IRA: 90-D:WBH
 (C:TS:PD
 SF:LB)

Mrs. Juanita O. Hatch
 356 Mountain Avenue
 Piedmont, California

Tax Liability for the Taxable Year Ended December 31, 1944

Income tax deficiency.....\$2,199.38

In making this determination of your income tax liability, careful consideration has been given to your protest dated November 5, 1946, and to the statements made at the conferences held on January 13, 1947, and August 18, 1947.

A copy of this letter and statement has been mailed to your representative, John W. Stokes & Co., 1775 Broadway, New York 19, N. Y., in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

Adjustments of Net Income

Net income as disclosed by return, page 4, line 3.....\$37,007.47

Unallowable deductions and additional income:

(a) Partnership income 5,483.98

Total\$42,491.45

Nontaxable income and additional deductions:

(b) Capital gain 2,741.99

Net income as adjusted.....\$39,749.46

Explanation of Adjustments

(a) and (b) Income from the partnership of Hatch Chevrolet Company, Stockton, California, is increased by \$5,483.98 due to the fact that a part of the gain from the sale of your partnership interest has been determined to be ordinary income from the partnership, instead of capital gain of \$2,741.99 (50% of \$5,483.98) reported by you.

Total ordinary net income reported on the
 partnership return\$75,444.43

Additions to income:

(1) Gain from sale of property other than capital assets.. 14,182.71

Net ordinary income of partnership as adjusted.....\$89,627.14

Your distributive share	\$32,915.83
Amount reported on your return.....	27,431.85
<hr/>	
Increase in partnership ordinary income.....	\$ 5,483.98
Net long-term capital gain reported on the partnership return	\$18,334.54
Deductions:	
Sale of assets other than capital assets.....	7,091.36
<hr/>	
(2) Net long-term capital gain of partnership as adjusted....	\$11,243.18
Your distributive share.....	\$ 4,347.36
Amount reported on your return.....	7,089.35
<hr/>	
Decrease in capital gain.....	\$ 2,741.99
(1) Ordinary gain from sale of property other than capital assets is \$14,182.71 as shown by Exhibit A, attached.	
(2) Long-term capital gain from the sale of capital assets of the partnership as shown by Exhibit A, attached.....	
Taxable at 50%.....	\$11,243.18

Computation of Alternative Tax

Net income	\$39,749.46	
Less: Excess of net long-term capital gain over net short-term capital loss.....	6,056.53	
<hr/>		
Ordinary net income	\$33,692.93	
Less: Surtax exemptions	1,500.00	
<hr/>		
Balance (surtax net income).....	\$32,192.93	
Surtax		\$14,585.40
Ordinary net income	\$33,692.93	
Less: Normal tax exemption.....	500.00	
<hr/>		
Balance subject to normal tax.....	\$33,192.93	
Normal tax at 3%.....		995.79
<hr/>		
Partial tax		\$15,581.19
50% of excess of net long-term capital gain over net short-term capital loss.....		3,028.27
<hr/>		
Alternative tax		\$18,609.46

Computation of Tax

Net income	\$39,749.46	
Less: Surtax exemption.....	1,500.00	
<hr/>		
Surtax net income.....	\$38,249.46	
Surtax on \$38,249.46.....		\$18,532.13

Net income	\$39,749.46	
Less: Normal tax exemption.....	500.00	
	<hr/>	
Normal tax net income.....	\$39,249.46	
Normal tax, 3% of \$39,249.46.....		1,177.48
	<hr/>	
Total tax		\$19,709.61
Alternative tax		\$18,609.46
Correct income tax liability.....		\$18,609.46
Income tax disclosed by return, page 1, line 6 (Original, Account No. 3005157 First California District).....		16,410.08
	<hr/>	
Deficiency of income tax.....		\$ 2,199.38

Exhibit A**Computation of Ordinary Gain and Long-Term Capital Gain**

On your return for the year 1944, there was included your share, as a partner, of the capital gain reported on the partnership return of Hatch Chevrolet Company filed for the period July 1, 1943, to March 31, 1944, derived from the sale of the assets of the partnership, which share was arrived at as follows:

	Partner's Shares		
	H. B. Hatch	Juanita Hatch	H. B. Hatch, Jr.
	40/75	29/75	6/75
Total			
Proceeds of sale.....	\$161,807.77		
Aggregate bases of business assets	125,138.70		
	<hr/>		
Gain realized	\$ 36,669.07		
Amount reported as long- term capital gain—			
50%	\$ 18,334.54	\$9,778.44	\$7,089.34
		\$1,466.76	

It is held that the transaction constituted a sale by the partnership of assets held pursuant to its business; that the following assets transferred in the sale were not capital assets under section 117, Internal Revenue Code, and gain realized thereon was not long-term capital gain:

Items	Proceeds Realized	Bases to Partnership
Accounts Receivable	\$ 16,541.46	\$19,655.04
Inventory, New Cars	4,288.88	2,953.76
Inventory, Used Cars	9,846.00	7,468.73
Inventory, Parts	50,707.04	40,426.89
Inventory, Accessories	11,602.00	11,664.73
Inventory, Miscellaneous	786.92	1,097.38
Inventory, Tires and Tubes	6,908.05	3,231.11
	<hr/>	<hr/>
Totals.....	\$100,680.35	\$86,497.64

Net gain realized reportable as ordinary gain—\$14,182.72.

The amounts of revised gain from the sale of business assets by the partnership, which are includible in your net income, are shown by the following allocation to members of the revised partnership gain:

		Ordinary Gain Reportable in Full	50% Reportable Portion Long-term Capital Gain
H. B. Hatch	40/75.....	\$ 7,564.12	\$ 5,996.36
Juanita O. Hatch	29/75.....	5,483.97	4,347.36
H. B. Hatch, Jr.	6/75.....	1,134.62	899.45
Total.....		<u>\$14,182.72</u>	<u>\$11,243.17</u>

Received and Filed T.C.U.S. May 17, 1948.

Served May 19, 1948.

The Tax Court of the United States

Docket No. 18483

[Title of Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4(a). Denies the allegations of error contained in subparagraph (a) of paragraph 4 of the petition.

5-a and b. Admits the allegations contained in subparagraphs a and b of paragraph 5 of the petition.

5-c. For lack of knowledge or information suffi-

cient to form a belief, denies the allegations contained in subparagraph c of paragraph 5 of the petition.

5-d. Admits the allegations contained in subparagraph d of paragraph 5 of the petition.

5-e. Denies the allegations contained in subparagraph e of paragraph 5 of the petition.

5-f. For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph f of paragraph 5 of the petition.

5-g, h and i. Denies the allegations contained in subparagraphs g, h and i of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;

T. M. MATHER,
LEONARD A. MARCUSSEN,
Special Attorneys,
Bureau of Internal Revenue.

Received and filed T.C.U.S. July 7, 1948.

The Tax Court of the United States

Docket No. 18485

HERBERT B. HATCH, JR.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IRA:90-D:WBH (C:TS:PD:SF:LB) dated February 20, 1948, and as a basis of his proceeding alleges as follows:

1. Petitioner is an individual and resides at Placerville, California. The return for the period here involved was filed with the Collector for the first district of California.

2. The notice of deficiency, a copy of which is attached and marked Exhibit A, was mailed to petitioner on February 20, 1948.

3. The taxes involved are income taxes for the taxable year ended December 31, 1944, in the amount of \$187.22.

4. The determination of tax set forth in the said notice of deficiency is based upon the following error:

(a) Increase of income from partnership of

Herbert B. Hatch, Juanita O. Hatch and Herbert B. Hatch, Jr., doing business as Hatch Chevrolet Company, by \$1,134.63, upon the ground that a part of the gain from the sale of petitioner's partnership interest was ordinary income from said partnership, and not a capital gain.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

5-a. Herbert B. Hatch, Juanita O. Hatch and Herbert B. Hatch, Jr., were copartners, doing business under the firm name and style of Hatch Chevrolet Company, at Stockton, California, pursuant to agreement entered into on December 1, 1942, in Stockton, California.

5-b. Said partners carried on a business of selling, distributing, repairing and servicing motor vehicles and motor vehicle parts both at wholesale and retail.

5-c. Said partners operated under a franchise for the sale of new automobiles and parts and accessories, from Chevrolet Motor Division of General Motors Corporation.

5-d. The capital investment of Herbert B. Hatch represented 40/75ths of the partnership, the capital investment of Juanita O. Hatch represented 29/75ths of the partnership, and the capital investment of Herbert B. Hatch, Jr., represented 6/75ths of the partnership.

5-e. On or about February 16, 1944, said partners sold their respective interests in said

partnership to King M. Chase, and received therefor the sum of \$161,807.77.

5-f. The cost to the partners of their interests in said partnership, for which they received the sum of \$161,807.77 as alleged in Paragraph 5-e, was \$125,138.70.

5-g. The sale as alleged in Paragraph 5-e represented capital assets of the partnership and the difference between the selling price of \$161,807.77 and the cost of \$125,138.70, or \$36,669.07, represented a capital gain to the partnership.

5-h. Petitioner, Herbert B. Hatch, Jr., realized a capital gain on such transaction of 6/75ths of said \$36,669.07, or the sum of \$2,933.53, of which 50 per cent was recognized.

5-i. Petitioner, Herbert B. Hatch, Jr., properly reported said gain in his income tax return filed for the year ended December 31, 1944.

Wherefore, petitioner prays that this Court may hear the proceeding and determine that there is no deficiency due for the taxable year ended December 31, 1944.

/s/ FREDERIC D. DASSORI,

/s/ JOHN W. STOKES,

/s/ M. H. COCHRAN,

Counsel for Petitioner.

State of California,
County of El Dorado—ss.

Herbert B. Hatch, Jr., being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition, or has had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ HERBERT B. HATCH, JR.

Subscribed and sworn to before me this 14th day of May, 1948.

[Seal] /s/ THOMAS MAUL,
Notary Public.

EXHIBIT A

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco 5, California

Feb. 20, 1948.

Mr. H. B. Hatch, Jr.,
c/o Hatch Chevrolet Co.,
Placerville, California.

Dear Mr. Hatch:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1944, discloses a deficiency of \$187.22, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco 5, California, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner.

By /s/ F. M. HARLESS,
Internal Revenue Agent
in Charge.

Enclosures:

Statement

Form 1276

Form of waiver

Exhibit A

STATEMENT

San Francisco
 IRA : 90-D : WBH
 (C : TS : PD :
 SF : LB)

Mr. H. B. Hatch, Jr.
 c/o Hatch Chevrolet Co.
 Placerville, California

Tax Liability for the Taxable Year Ended December 31, 1944

Income tax deficiency.....\$187.22

In making this determination of your income tax liability, careful consideration has been given to your protest dated November 5, 1946, and to the statements made at the conferences held on January 13, 1947, and August 18, 1947.

Adjustments to Net Income

Net income as disclosed by return.....\$ 7,387.30

Unallowable deductions and additional income:

(a) Partnership income 1,134.63

Total\$ 8,521.93

Nontaxable income and additional deductions:

(b) Capital gain 567.31

Net income as adjusted.....\$ 7,954.62

Explanation of Adjustments

(a) and (b) Income from the partnership of Hatch Chevrolet Company, Stockton, California, is increased by \$1,134.63 due to the fact that a part of the gain from the sale of your partnership interest has been determined to be ordinary income from the partnership, instead of capital gain of \$567.31 (50% of \$1,134.62) reported by you.

Total ordinary net income reported on the

partnership return\$75,444.43

Additions to income:

(1) Gain from sale of property other than capital assets.. 14,182.71

Net ordinary income of partnership as adjusted.....\$89,627.14

Your distributive share.....\$ 6,810.17

Amount reported on your return..... 5,675.54

Increase in partnership ordinary income.....\$ 1,134.63

Net long-term capital gain reported on the

partnership return\$18,334.54

Deductions:

Sale of assets other than capital assets..... 7,091.36

(2) Net long-term capital gain of partnership as adjusted.....	\$11,243.18
Your distributive share.....	\$ 899.46
Amount reported on your return.....	1,466.77

Decrease in capital gain.....	\$ 567.31
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(1) Ordinary gain from sale of property other than capital assets is \$14,182.71 as shown by Exhibit A, attached.

(2) Long-term capital gain from the sale of capital assets of the partnership as shown by Exhibit A, attached.....	\$22,486.36
Taxable at 50%.....	\$11,243.18

Computation of Tax

Net income	\$ 7,954.62
Less: Surtax exemption.....	1,000.00

Surtax net income.....	\$ 6,954.62
Surtax on \$6,954.62.....	\$ 1,646.39

Net income	\$ 7,954.62
Less: Normal tax exemption.....	500.00

Normal tax net income.....	\$ 7,454.62
Normal tax, 3% of \$7,454.62.....	223.64

Correct income tax liability.....	\$ 1,870.03
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Income tax disclosed by return, page 1, line 6 (Original, First California District).....	1,682.81
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Deficiency of income tax.....	\$ 187.22
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Exhibit A

Computation of Ordinary Gain and Long-Term Capital Gain

On your return for the year 1944, there was included your share, as a partner, of the capital gain reported on the partnership return of Hatch Chevrolet Company filed for the period July 1, 1943, to March 31, 1944, derived from the sale of the assets of the partnership, which share was arrived at as follows:

	Partner's Shares			
	H. B. Hatch	Juanita Hatch	H. B. Hatch, Jr.	
	40/75	29/75	6/75	
Proceeds of sale.....	\$161,807.77			
Aggregate bases of business assets	125,138.70			
Gain realized	\$ 36,669.07			
Amount reported as long- term capital gain—				
50%	\$ 18,334.54	\$9,778.44	\$7,089.34	\$1,466.76

It is held that the transaction constituted a sale by the partnership of assets held pursuant to its business; that the following assets transferred in the sale were not capital assets under section 117, Internal Revenue Code, and gain realized thereon was not long-term capital gain:

Items	Proceeds Realized	Bases to Partnership
Accounts Receivable	\$ 16,541.46	\$19,655.04
Inventory, New Cars	4,288.88	2,953.76
Inventory, Used Cars	9,846.00	7,468.73
Inventory, Parts	50,707.04	40,426.89
Inventory, Accessories	11,602.00	11,664.73
Inventory, Miscellaneous	786.92	1,097.38
Inventory, Tires and Tubes	6,908.05	3,231.11
Totals.....	\$100,680.35	\$86,497.64

Net gain realized reportable as ordinary gain—\$14,182.72.

The amounts of revised gain from the sale of business assets by the partnership, which are includible in your net income, are shown by the following allocation to members of the revised partnership gain:

	Ordinary Gain Reportable in Full	50% Reportable Portion Long-term Capital Gain
H. B. Hatch 40/75.....	\$ 7,564.12	\$ 5,996.36
Juanita O. Hatch 29/75.....	5,483.97	4,347.36
H. B. Hatch, Jr. 6/75.....	1,134.62	899.45
Total.....	<u>\$14,182.72</u>	<u>\$11,243.17</u>

Received and Filed T.C.U.S. May 17, 1948.

Served May 19, 1948.

The Tax Court of the United States

Docket No. 18485

[Title of Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Admits that petitioner is an individual and resides at Placerville, California; for lack of knowledge or information sufficient to form a belief, denies the remaining allegations contained in paragraph 1 of the petition.

2 and 3. Admits the allegations contained in paragraphs 2 and 3 of the petition.

4 (a). Denies the allegations of error contained in subparagraph (a) of paragraph 4 of the petition.

5-a and b. Admits the allegations contained in subparagraphs a and b of paragraph 5 of the petition.

5-c. For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph c of paragraph 5 of the petition.

5-d. Admits the allegations contained in subparagraph d of paragraph 5 of the petition.

5-e. Denies the allegations contained in subparagraph e of paragraph 5 of the petition.

5-f. For lack of knowledge or information suffi-

cient to form a belief, denies the allegations contained in subparagraph f of paragraph 5 of the petition.

5-g, h and i. Denies the allegations contained in subparagraphs g, h and i of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel;
T. M. MATHER,
LEONARD A. MARCUSSEN,
Special Attorneys,
Bureau of Internal Revenue.

Received and filed T.C.U.S. July 7, 1948.

The Tax Court of the United States
Docket Nos. 18482, 18483, and 18485

[Title of Causes.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties to each of these proceedings that the

following facts shall be taken as true and received as evidence in each of these proceedings, together with all exhibits submitted with this stipulation and made a part hereof, subject to the right of either party in each of these proceedings to offer further and additional evidence not inconsistent with or contrary to the facts herein stipulated.

1. The taxes involved are income taxes as follows:

Taxpayer	Period	Amount
Estate of Herbert B. Hatch, Deceased.....	1/1/44- 4/ 9/44	\$3,702.31
Juanita O. Hatch.....	1/1/44-12/31/44	2,199.38
Herbert B. Hatch, Jr.....	1/1/44-12/31/44	187.22

2. On December 1, 1942, Herbert B. Hatch, now deceased; Juanita O. Hatch, his wife, and Herbert B. Hatch, Jr., of Stockton, California, entered into a written agreement of co-partnership. A copy of said agreement is attached hereto and marked Exhibit 1-A. The partners adopted Hatch Chevrolet Co. as the name of the partnership business.

3. On October 9, 1942, Herbert B. Hatch, Jr., was a member of the United States Army Air Corps. On that date he executed a general power of attorney to his father, Herbert B. Hatch.

4. On February 16, 1944, an agreement was entered into between Herbert Brooks Hatch, Juanita Osborn Hatch, and H. B. Hatch, Jr., as co-partners, as parties of the first part, and King M. Chase, party of the second part, and Chase made a payment of \$5,000.00 at that time. A copy of said agreement is attached hereto and marked Exhibit

2-B. The "statement" which is a part of said Exhibit 2-B reflects only the items to be transferred to Chase pursuant to said agreement for the tentative sales price of \$175,229.51. It is not a financial statement of the partnership. It does not include cash in bank which was retained by the partnership in the amount of \$35,249.90 and two automobiles having a book value of \$1,542.66, and certain liabilities not assumed by the purchaser in the amount of \$15,588.55.

5. On March 3, 1944, the partners delivered a bill of sale to King M. Chase. A copy of said bill of sale is attached hereto and marked Exhibit 3-C. The "statement" which is a part of said exhibit is not a financial statement of the partnership. \$156,807.77 of the purchase price of \$161,807.77 was paid by King M. Chase by means of a check, a copy of which is attached and marked Exhibit 4-D. The interests of the partners or the assets of the partnership (as the Court may determine) which were sold to Chase had a total cost basis of \$125,138.70 and the gain on the sale was \$36,669.07. The refund of the reserve for bad debts as provided for in the agreement of February 16, 1944, was made by Chase subsequent to the close of the partnership's fiscal year ended June 30, 1944.

6. Herbert B. Hatch died a resident of Stockton, California, on April 9, 1944.

7. The assets of the partnership which were sold to King M. Chase were not distributed in kind to the co-partners prior to the sale thereof. Partial

distributions were made to the co-partners on the dates specified below by checks drawn on the co-partners' account with the American Trust Company's Stockton offices in the amounts shown below:

#4	6/12/44	Estate of Herbert Brooks Hatch, Sr. Deceased.....	\$40,000.00
#5	6/12/44	Juanita O. Hatch.....	29,000.00
#6	6/12/44	Herbert Brooks Hatch, Jr.	6,000.00
#11	9/ 9/44	Estate of Herbert Brooks Hatch, Sr., Deceased.....	53,333.33
#12	9/ 8/44	Juanita O. Hatch.....	38,666.67
#13	9/ 8/44	H. B. Hatch, Jr.	8,000.00

Copies of said checks are attached hereto and marked Exhibit 5-E. Other distributions were made to the partners and to the estate of the deceased partner on subsequent dates.

8. An amended partnership return of income (Form 1065) for the fiscal year beginning July 1, 1943, and ending June 30, 1944, was filed by the Hatch Chevrolet Company with the Collector of Internal Revenue for the First District of California on September 19, 1944. In said amended return the partnership reported an ordinary net income in the amount of \$75,444.43 and a long-term capital gain from sale of business in the amount of \$36,669.07, \$18,334.54 of which was to be taken into account. In Schedule J of said amended return the partnership reported the partners' shares of income and credits as follows:

	Ordinary Income	Long Term Capital Gains	Charitable Contributions
H. B. Hatch—			
Stockton, Calif.	\$42,337.04	\$ 9,778.42	\$213.33
Juanita O. Hatch.....	27,431.85	7,089.35	154.67
H. B. Hatch, Jr.	5,675.54	1,466.77	32.00
Totals.....	\$75,444.43	\$18,334.54	\$400.00

9. An individual income tax return for the period January 1, 1944, to April 9, 1944 (date of death) was filed by the executors of the Estate of H. B. Hatch with the Collector of Internal Revenue for the First District of California on March 3, 1945. In said return there was reported ordinary income from partnership of the Hatch Chevrolet Company in the amount of \$42,337.04 and there was reported on Schedule D as a long-term capital gain, "as shown on amended partnership return of Hatch Chevrolet Company, Stockton, California, \$9,778.42," the amount being shown in the column entitled "Gain or loss to be taken into account."

10. The petitioner Juanita O. Hatch filed her individual income tax return for the year 1944 with the Collector of Internal Revenue for the First District of California on January 15, 1945. In said return there was reported ordinary income from partnership of the Hatch Chevrolet Company in the amount of \$27,431.85, and there was reported on Schedule D as a long-term capital gain, "as shown on amended partnership return of Hatch Chevrolet Company, Stockton, California, \$7,089.35," the amount being shown in the column entitled "Gain or loss to be taken into account."

11. An individual income tax return for Herbert B. Hatch, Jr., for the year 1944 was filed with the Collector of Internal Revenue for the First District of California on February 26, 1945. In said return there was reported ordinary income from partnership of the Hatch Chevrolet Com-

pany in the amount of \$5,675.54, and there was reported on Schedule D as a long-term capital gain, "as shown on amended partnership return of Hatch Chevrolet Company, Stockton, California, \$1,466.77," the amount being shown in the column entitled "Gain or loss to be taken into account."

12. A notice of deficiency was mailed to each of the petitioners herein on February 20, 1948, copies of which are attached to the respective petitions.

13. Prior to February 21, 1944, the Hatch Chevrolet Co. operated its business under a franchise from the Chevrolet Motor Division, General Motors Corporation.

/s/ FREDERIC D. DASSORI,
Counsel for Petitioners.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

EXHIBIT 1-A

Partnership Agreement

This Agreement between H. B. Hatch, first party; J. O. Hatch, second party; and H. B. Hatch, Jr., third party; all of Stockton, San Joaquin County, California:

Witnesseth:

I.

The parties hereto agree to associate themselves as co-partners in the business of selling, distribut-

ing, repairing, and servicing motor vehicles and motor vehicle parts both at wholesale and retail.

II.

The name of the partnership shall be Hatch Chevrolet Co.

III.

The principal place of business of the partnership shall be Stockton, San Joaquin County, California.

IV.

The term of this partnership shall commence December 1st, 1942, and shall continue indefinitely thereafter until dissolved by written notice of dissolution signed by one partner and delivered to or mailed to the last known address of the other partners at least sixty days prior to dissolution, or by operation of law.

V.

The partners hereto are to receive all of the assets of Hatch Chevrolet Company, a corporation, with principal place of business at Stockton, California, upon dissolution of said corporation, in undivided interests in the following proportions:

The first party receives 40/75 of the purchase price.

The second party receives 29/75 of the purchase price.

The third party receives 6/75 of the purchase price.

These assets shall constitute the capital contribution

to this partnership, and the interests of all parties in the partnership shall be held in the same proportions.

VI.

No partner shall be required or permitted to advance individual funds to the partnership without the consent of the others, but all advances made with such consent shall bear interest at the rate of 5% per annum, shall be repayable upon demand unless otherwise agreed, and shall not alter the partnership interest of the parties.

VII.

If any partner with the consent of the others becomes indebted to the partnership, such indebtedness shall be repayable upon demand unless otherwise agreed among them and shall bear interest at 5% per annum.

VIII.

The first party shall be General Manager of the partnership business and in entire charge of all operations therein with unlimited discretion in such management, except that he shall not have the power to dispose of the business as a whole or of any major portion of the assets thereof, nor make a gift of any of the partnership assets, nor dispose of any of the same for a nominal consideration, without the consent of the others. He shall devote his entire business time to the business of the partnership and shall engage in no other activity for profit except the investment of his private funds

and the management of his private property interests.

IX.

The second party and the third party shall give general assistance and advice in the management of the business but shall not be required to devote any specific time thereto.

X.

The first party, in consideration of his services to the partnership, shall have the right to withdraw from the net profits of the partnership all of said net profits up to the sum of \$7200 per year, withdrawable monthly. The amount of the first party's withdrawals upon such basis may be changed from time to time by mutual agreement of all the partners. All net profits remaining in excess of the amount paid to the first party may be distributed from time to time by mutual agreement of the partners among the partners in proportion to their respective contributions of capital above set forth. Loss shall be borne in the same proportions. Contributions to the capital shall not bear interest.

XI.

All funds received by the partnership shall be deposited in a bank in Stockton, California, and shall be subject to withdrawal by check of the first party.

XII.

The first party shall cause to be kept at all times correct books of account wherein shall be set

down all moneys received and all moneys expended and all accounts and credits receivable and all obligations incurred. Such books shall be kept at the principal place of business of the partnership and shall be open for inspection by all partners at all times. Accounts shall be balanced at the close of each fiscal year of the partnership, and the net profit or loss shall be determined and withdrawal of the profits, if any, agreed upon. The fiscal year for such purpose shall commence December 1, and end November 30 of the following year, subject to change from time to time by mutual agreement of the partners. Withdrawals of profits may be made during the year from time to time by mutual consent of the partners.

XIII.

In the event of the dissolution of the partnership by agreement of the partners, a full and complete inventory shall be prepared and the assets, liabilities, and income, both gross and net, shall be ascertained, the debts of the partnership shall be discharged, and all moneys and assets of the partnership then remaining shall be divided in specie among the partners according to their capital contribution.

XIV.

In the event of the death or withdrawal of one of the partners, the other partners shall have the first option of purchasing the interest of the deceased or withdrawing partner at its book value, said op-

tion to be exercised upon written notice to the withdrawing partner or to the representative of his estate within sixty days after receipt of notice of withdrawal and within sixty days after the appointment and qualification of such representative.

XV.

In the event that any partner desires to sell his interest in the partnership, the remaining partners, or either of them, shall have the option of purchasing such partner's interest for the same price as the latter shall be willing to accept from any third person, not to exceed in any event the book value of such interest, which option shall extend for a period of sixty days after written notice is given by the intended seller to the remaining partners of his intention to sell and the price offered.

XVI.

The enumeration of the activities of the partnership herein above-contained shall not be deemed a restriction upon the power of the partnership to carry on incidental and related activities, such as the rental of articles of personal property, the sale of articles other than motor vehicles and motor vehicle parts, the writing and handling of all forms of insurance, insuring both person and property in connection with the business herein above set forth and such other activities as are customarily carried on in connection with a business of this character.

In Witness Whereof, the parties have hereunto

set their hands in triplicate this 1st day of December, 1942.

/s/ H. B. HATCH,
First Party.

/s/ J. O. HATCH,
Second Party.

/s/ H. B. HATCH, JR.,
Third Party.

EXHIBIT 2-B

Agreement of Sale

This Agreement made and entered into the 16th day of February, 1944. Parties of the first part are Herbert Brooks Hatch, Sr., generally known as H. B. Hatch, Juanita Osborn Hatch, his wife, and Herbert Brooks Hatch, Jr., over the age of twenty-one (21) years, as co-partners transacting business under the firm, name and style of Hatch Chevrolet Company. H. B. Hatch and Juanita Osborne Hatch are appearing herein on behalf of themselves. H. B. Hatch is representing Herbert Brooks Hatch, Jr., by virtue of a General Power of Attorney, the latter being at the present time in the armed forces of the United States.

Party of the second part is King M. Chase.

Witnesseth:

It Is Agreed that first parties will sell to second party all of the business and assets of Hatch Chevrolet Company, a co-partnership, hereinafter listed.

and the transaction shall be escrowed until a complete inventory and appraisalment has been completed. However, the parties deeming the circumstances to warrant the action, said party of the second part shall take over possession of the physical assets of the business at 8 o'clock A.M. on Monday, February 21, 1944, and thence forward shall operate said business to all intents and purposes as though this transaction had been completed and title thereto passed to the party of the second part.

Second party shall, upon taking possession, have permission to operate the business under the name of Hatch Chevrolet Company for a limited period of time to enable him to make the necessary arrangements for the future title or trade name of said business.

The tentative sales price of said business and assets is the Sum of One Hundred Seventy-five Thousand Two Hundred Twenty-nine and 51/100s Dollars (\$175,229.51). This figure or amount may be appreciated or depreciated according to the results of the inventory to be taken.

Second party takes and assumes all accounts receivable and upon which there has been set up a fifteen per cent (15%) reserve for bad debts on over 90-day accounts and doubted 60-day accounts. Any part of said reserve not used to cover uncollectible accounts is to be re-paid to first parties as soon as practicable and not later than June 30, 1944. On this latter date the parties will review the accounts and make necessary adjustments.

Insurance shall be pro-rated as of the date of the release of the escrow herein, which will be deemed to be the date of sale.

New cars (4) are to be figured at wholesale price plus increment plus also new car freight and handling.

Used cars are to be based upon the Kelley Book retail list.

Parts, accessories, gas, oil, grease, Duco materials, sublet repairs, work in process—labor, miscellaneous merchandise, tires and tubes and tire repair materials, are to be determined by the actual inventory taken, at cost price.

Taxes are also to be pro-rated as of the date of the release of escrow which is to be the date of sale.

Certain direct mail advertising is being prepared for Hatch Chevrolet Company and the expense of the same is to be assumed by party of the second part.

As to the fixed assets, these are to be listed and considered as machinery and shop equipment, parts and accessories, equipment, furniture and fixtures, service cars and other fixed assets. A physical inventory of these fixed assets shall be taken and their appraised value will be mutually fixed and agreed upon by H. B. Hatch and King M. Chase.

There are two items denominated "deferred assets." The first consists of advances to employees in the sum of Four Hundred Twenty-eight and 60/100 Dollars (\$428.60). The second constitutes a G.M.A.C. contingent liability of the present of Twenty-one Thousand Five Hundred Forty-three

Dollars (\$21,543.00). G.M.A.C. holds a repossession reserve of Nine Hundred Ninety-one and 15/100s Dollars (\$991.15) which is to be paid by G.M.A.C. to said party of the second part progressively as said contingent liability is reduced and liquidated. These "deferred assets" are assumed by party of the second part.

Second party assumes the following current liabilities:

Accounts receivable credit balances. \$969.11

Service contract deposits. \$373.50

Employee War Bonds \$290.02

It Is Specifically Understood and Agreed that during the period that second party operates said business under the firm, name and style of Hatch Chevrolet Company that he will, in all respects, save the parties of the first part harmless from any obligations, liabilities or detriment whatsoever and that said second party will carry such types of insurance as shall serve best to afford such protection.

Attached hereto is a "Financial Statment" containing the figures set up as the tentative basis for determining the overall sales and purchase price of One Hundred Seventy-five Thousand Two Hundred Twenty-nine and 51/100s Dollars (\$175,229.51). As hereinabove stated, certain of these items are subject to appreciation or depreciation according to the actual facts found.

It Is Agreed that the sale and purchase herein outlined shall be consummated as soon as the exact figures are ascertained from the inventory and appraisement.

Terms—cash, and cost of taking inventory to be assumed by first parties and second party equally.

It Is Understood and Agreed that if parties of the first part find it necessary to defend themselves against any actions, liabilities or detriments occasioned by second party or to take any action to enforce the terms of this agreement, then and in that event said party of the second part assumes and agrees to pay a reasonable attorney's fee and in the event of an action at law, the costs of suit.

In Witness Whereof the parties have executed this agreement in duplicate the day and year herein first above written, each copy being deemed an original. H. B. Hatch is executing this agreement on behalf of his son, Herbert Brooks Hatch, Jr., by virtue of a General Power of Attorney which he holds.

/s/ HERBERT BROOKS
HATCH, SR.,

/s/ JUANITA OSBORN HATCH,
HERBERT BROOKS
HATCH, JR.,

By /s/ H. B. HATCH, SR.,
His Attorney in Fact,
Parties of the First Part,

/s/ KING M. CHASE,
Party of the Second Part.

EXHIBIT 3-C

Bill of Sale

Know All Men by These Presents:

That Herbert Brooks Hatch, Sr., generally known as H. B. Hatch, Juanita Osborn Hatch, his wife, and Herbert Brooks Hatch, Jr., over the age of twenty-one years, as co-partners transacting business under the firm name and style of Hatch Chevrolet Company, the Parties of the First Part, in consideration of the sum of One Hundred Sixty-one Thousand Eight Hundred Seven and 77/100th Dollars (\$161,807.77) current lawful money of the United States of America, to them in hand paid by King M. Chase, the Party of the Second Part, the receipt whereof is hereby acknowledged, do by these presents sell unto the Party of the Second Part, his executors, administrators and assigns, the following described personal property, to wit:

All that property set forth and described in the Inventories listing said personal property—

(1) Parts Department Inventory consisting of 165 pages.

(2) Accessory Department and Miscellaneous Merchandise consisting of 18 pages.

(3) Gas, Oil and Grease Inventory consisting of one page.

(4) Duco Material Inventory consisting of 5 pages.

(5) Work in Process & Sublet Repairs consisting of 5 pages.

(6) Tire Department Inventory consisting of 6 pages.

(7) Machinery and Shop Equipment consisting of 19 pages.

(8) Parts & Accessory Equipment consisting of one page.

(9) Furniture & Fixtures consisting of 7 pages.

(10) Service Cars (7) consisting of one page.

(11) Other Fixed Assets, consisting of one page.

(12) New Cars (4) consisting of one page.

(13) New Car Freight and Handling plus Increment consisting of one page.

(14) Used Cars (13) consisting of one page.

Reference is further made to the financial statement hereto attached covering the period to February 21st, 1944, wherein the purchase price figure is ascertained.

Reference is further made to that certain "Agreement of Sale" entered into the 16th day of February, 1944, between the parties hereto. This Bill of Sale is limited by the terms of said agreement and said agreement is made a part hereof by reference. It is particularly understood and agreed that from and after the hour of eight o'clock A.M. on Monday, February 21st, 1944, said Party of the Second Part

has assumed all liabilities whatsoever arising from the operation of the Hatch Chevrolet Company subsequent to that hour and date and that the parties of the First Part continue to hold and assume any and all liabilities arising from the operation of the Hatch Chevrolet Company prior to that hour and date except such specific liabilities as have been assumed in writing by said Party of the Second Part. Of particular mention are the possible liabilities arising from various Federal and State taxes and from executive orders.

To Have and to Hold, the same unto the Party of the Second Part, his executors, administrators and assigns forever.

And said Parties of the First Part do for their heirs, executors and administrators covenant and agree with the Party of the Second Part, his heirs, executors, administrators and assigns to warrant and defend the sale of the said property, goods and chattels unto the Party of the Second Part, his executors, administrators and assigns against all and every person and persons whomsoever lawfully claiming or to claim the same.

In Witness Whereof, the Parties of the First Part have hereunto set their hands the third day of March, 1944.

Herbert Brooks Hatch, Sr., and Juanita Osborn Hatch have signed their names hereto in person. The name of Herbert Brooks Hatch, Jr., was signed

by his father, Herbert Brooks Hatch, Sr., by virtue of a general Power of Attorney.

/s/ HERBERT BROOKS
HATCH, SR.,

/s/ JUANITA OSBORN HATCH,
HERBERT BROOKS
HATCH, JR.,

By /s/ H. B. HATCH,
His Attorney in Fact.

All signing the same as co-partners transacting
business as Hatch Chevrolet Company.

WHERE FRIEND MEETS FRIEND

Hatch Chevrolet Company 14533
MINER AVENUE AT HUNTER
STOCKTON, CALIFORNIA, 104

ONE HUNDRED FIFTY SIX THOUSAND EIGHT HUNDRED SEVEN & 77/100 156,907.77

Hatch Chevrolet Company

BY _____

BY _____

TO THE ORDER OF

**L. B. Hatch, Juanita O. Hatch,
L. B. Hatch Jr.—Co-Partners**

PAY

HUNTER SQUARE BRANCH
11 NORTH HUNTER ST.
BANK OF AMERICA 90-104
NATIONAL TRUST & SAVINGS ASSOCIATION
STOCKTON, CALIFORNIA

PAY ONLY THROUGH
CLEARING HOUSE
90-1367 MAR 6 1944 90-1367
AMERICAN TRUST COMPANY
STOCKTON OFFICE
STOCKTON, CALIFORNIA

For credit only
to account of
H. B. Hatch
Juanita O. Hatch
H. B. Hatch Jr.,
Co-Partners.

STOCKTON OFFICE 90-1367

AMERICAN TRUST COMPANY

24 NORTH SUTTER STREET



STOCKTON, CALIFORNIA

June 12th 1944

PAY TO THE
ORDER OF

Estate of Herbert Brooks Hatch, Jr. Deceased. \$40,000⁰⁰—

Forty Thousand and 00/100 DOLLARS

H. B. HATCH - J. O. HATCH
and H. B. HATCH, JR., CO-OWNERS

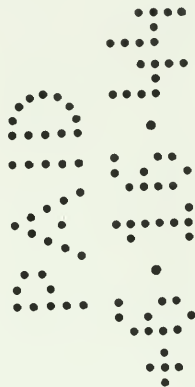


Herbert B. Hatch

American Trust Company
Executor of the Last Will and Testament of Herbert B. Hatch, deceased
C. W. Cadigan,
Assistant Secretary

Herbert B. Hatch
President

FOR DEPOSIT
AMERICAN TRUST COMPANY



P 374



STOCKTON OFFICE 90-1367

AMERICAN TRUST COMPANY

24 NORTH SUTTER STREET

5

No

STOCKTON, CALIFORNIA

PAY TO THE
ORDER OF*Juanita O. Hatch*

June 12, 1944
 \$89,000.00

Twenty-nine Thousand and no/100 DOLLARS
 H. B. HATCH - JUANITA O. HATCH
 and H. B. HATCH, JR., CO-PARTNERS

*Juanita O. Hatch*

Payable to Juanita O. Hatch
June 12, 1944

AMERICAN TRUST COMPANY
 24 NORTH SUTTER STREET
 STOCKTON, CALIFORNIA

DEPOSITED TO THE ACCOUNT OF
 WITHIN NAMED PARTY
 ACK OF ENDORSEMENT GUARANTEED
 AMERICAN TRUST COMPANY
 STOCKTON, CALIFORNIA

STOCKTON OFFICE 90-1367

No. 6

AMERICAN TRUST COMPANY

24 NORTH SUTTER STREET



STOCKTON, CALIFORNIA: June 12th, 1944.

Harbert Brooks Hatch, Jr.

PAY TO THE ORDER OF

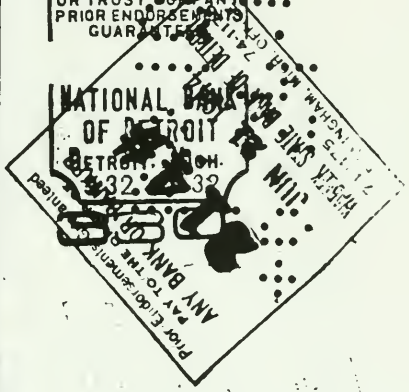
\$6000.00

Six Thousand and no/100 DOLLARS
H. B. HATCH - JUANITA O. HATCH
and H. B. HATCH, Jr., CO-PARTNERS



Juanita O. Hatch

PAID
THROUGH
DETROIT CLEARING
HOUSE
JUN-22 1944
OR
PAY TO THE ORDER OF
ANY BANK, BANKER
OR TRUST COMPANY
PRIOR ENDORSEMENTS
GUARANTEED



Credited to the account of the
Within named payee with the
Wabeek State Bank of Detroit
Birmingham, Mich. Office.
ENDORSEMENT GUARANTEED

Pay to the order of the
Bank or Clearing House
through which
this check is cashed

JUN 22 1944
JUN 22 1944



STOCKTON OFFICE 90-1367
AMERICAN TRUST COMPANY
24 NORTH SUTTER STREET

NO 21

September 9, 1944. 19

PAY TO THE
ORDER OF

ESTATE of H. B. Hatch Deceased

\$53,333.33

EXACTLY FIFTY THREE THOUSAND AND 33/100

DOLLARS

H. B. HATCH - JUANITA O. HATCH
and H. B. HATCH, Jr., COPARTNERS
Juanita O. Hatch



PAID TO THE ACCOUNT OF
AMERICAN TRUST COMPANY
SAN FRANCISCO
SEP 11 1944
AMERICAN TRUST COMPANY
SAN FRANCISCO
11-24
FOR DEPOSIT COMPANY
L

STOCKTON OFFICE 90-1367

AMERICAN TRUST COMPANY

24 NORTH SUTTER STREET



PAY TO THE
ORDER OF

STOCKTON, CALIFORNIA
JUANITA O. HATCH

September 8, 1944

19

\$ 38,666.67

EXACTLY 67 CTS

DOLLARS

H. B. HATCH - JUANITA O. HATCH
and H. B. HATCH, JR., COPARTNERS



Juanita O. Hatch

No. 12

PAID 4

STOCKTON OFFICE 90-1387



AMERICAN TRUST COMPANY

24 NORTH BUTTER STREET

NO. 13

STOCKTON, CALIFORNIA September 8, 1944

PAY TO THE ORDER OF

H. B. Hatch, Jr.

\$8,000.00

DOLLARS

EXACTLY \$8,000.00

H. B. HATCH - JUANITA O. HATCH
and M. B. HATCH, Jr., COPARTNERS



Juanita O. Hatch

Credited to the account of the
Birmingham Bank of
Detroit, Mich.
SEP 15 1944
PAY TO THE ORDER OF
ANY BANK OR BANKER
OR TRUST COMPANY
PRIOR ENDORSEMENTS
GUARANTEED

Pay to the order of any Bank
or Trust Company through the
Clearing House
SEP 18 1944

NATIONAL BANK
OF DETROIT
DETROIT, MICH.
9-32 932
324

Prior Endorsements Guaranteed
PAY TO THE ORDER OF
ANY BANK OR BANKER
SEP. 14 1944
BIRMINGHAM, MICH. OFF.

The Tax Court of the United States

Docket Nos. 18482, 18483, 18485

ESTATE OF HERBERT B. HATCH, Deceased;
JUANITA O. HATCH, Executrix, and
AMERICAN TRUST CO., Executor,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

JUANITA O. HATCH,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

HERBERT B. HATCH, JR.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated February 23, 1950

Gain or Loss—Capital Asset—Sale by Partners

Where individuals acting as partners sell to another most of the assets of a partnership subject to some of its liabilities, without a distribution of the assets to the partners prior to the sale, and the partnership survives the sale, the transaction is a sale by the partnership of some of its assets and not

a sale by the partners individually of their interests in the partnership, for the purpose of determining to what extent the gain realized upon the sale is taxable to the partners as capital gain.

FREDERIC D. DASSORI, ESQ.,

For the petitioners.

C. W. NYQUIST, ESQ.,

For the respondent.

OPINION

Murdock, Judge:

The Commissioner determined deficiencies in income tax as follows:

Petitioner	Doc. No.	Taxable Period	Deficiency
Estate of Herbert B. Hatch, Deceased.....	18482	Jan. 1-Apr. 9, 1944	\$3,702.31
Juanita O. Hatch	18483	1944	2,199.38
Herbert B. Hatch, Jr.	18485	1944	187.22

The sole issue is whether the Commissioner erred in determining that a part of the gain realized by Herbert B. Hatch, Juanita O. Hatch and Herbert B. Hatch, Jr., upon a sale involving their partnership business and assets in 1944 is taxable to them as ordinary income.

The facts are stipulated.

Herbert B. Hatch, Juanita O. Hatch, his wife, and Herbert B. Hatch, Jr., their son were individuals engaged in the automobile business in Stockton, California, prior to 1944. Their individual returns for the taxable periods involved were filed with the collector of internal revenue for the first district of California.

The Hatches formed a partnership on December 1, 1942, to engage for an indefinite term "in the business of selling, distributing, repairing, and servicing motor vehicles and motor vehicle parts both at wholesale and retail" under the name of Hatch Chevrolet Co. The business was operated under a franchise from the Chevrolet Motor Division of General Motors Corporation. The record does not show whether that franchise was either valuable or transferable.

The Hatches "as co-partners transacting business under the firm, name and style of Hatch Chevrolet Company," parties of the first part, executed an "Agreement of Sale" on February 16, 1944, with King M. Chase, party of the second part, providing in part:

* * * that first parties will sell to second party all of the business and assets of Hatch Chevrolet Company, a co-partnership, hereinafter listed, and the transaction shall be escrowed until a complete inventory and appraisal has been completed. However, * * * said party of the second part shall take over possession of the physical assets of the business * * * on * * * February 21, 1944, and thence forward shall operate said business to all intents and purposes as though this transaction has been completed and title thereto passed to the party of the second part.

Second party shall, upon taking possession, have permission to operate the business under the name of Hatch Chevrolet Company for a limited period of time to enable him to make

the necessary arrangements for the future title or trade name of said business.

The tentative sales price of said business and assets is the sum of * * * (\$175,229.51). This figure or amount may be appreciated or depreciated according to the results of the inventory to be taken.

The Hatches executed a "Bill of Sale" on March 3, 1944, providing that they "as co-partners transacting business under the firm name and style of Hatch Chevrolet Company, the Parties of the First Part, in consideration of the sum of * * * (\$161,807.77) * * * to them in hand paid by King M. Chase, the Party of the Second Part, the receipt whereof is hereby acknowledged, do by these presents sell unto the Party of the Second Part, his executors, administrators and assigns, the following described personal property [listed in a schedule] * * *." Chase paid \$5,000 of the purchase price at the time of the agreement of February 16, and he paid the remainder of the purchase price by means of a check dated March 3, 1944, and payable to the order of the Hatches, "Co-Partners." The property transferred to Chase included all of the assets of the partnership except the General Motors franchise, two automobiles, cash in a substantial amount, and the partnership name. Chase assumed a part, but not all, of the liabilities of the partnership.

The assets of the partnership which were sold to Chase were not distributed in kind to the Hatches

prior to the sale thereof. His check dated March 3 was credited to the bank account of the Hatches, "Co-Partners," on March 6, 1944. Partial distributions were made to them by checks drawn on that account beginning in June, 1944.

Herbert B. Hatch died a resident of Stockton, California, on April 9, 1944. Juanita O. Hatch and American Trust Company are the executrix and executor, respectively, under the last will and testament of Herbert B. Hatch.

The partnership reported on its amended return for the fiscal year ending June 30, 1944, filed on September 19, 1944, a long-term capital gain from the sale to Chase in the amount of \$36,669.07, \$18,-334.54 of which was taken into account and divided as follows:

Herbert B. Hatch	\$9,778.42
Juanita O. Hatch	7,089.35
Herbert B. Hatch, Jr.....	1,466.77

The Hatches separately reported those amounts on their respective individual returns for the taxable periods involved as "Gain or loss to be taken into account."

The Commissioner allowed the partnership a long-term capital gain from the sale to Chase in the amount of \$22,486.36 (recognized to the extent of \$11,243.18), determined that the gain from the sale in the amount of \$14,182.71 was ordinary income to the partnership from the sale of property other than capital assets, and made corresponding proportionate adjustments in the individual income of Herbert B. Hatch, Juanita O. Hatch, and Herbert

B. Hatch, Jr., for the taxable periods involved, on the ground that “the transaction constituted a sale by the partnership of assets held pursuant to its business; that the * * * [accounts receivable and inventories] transferred in the sale were not capital assets under section 117, Internal Revenue Code, and gain realized thereon was not long-term capital gain.”

The parties stipulate that the cost of “the interests of the partners or the assets of the partnership (as the Court may determine) which were sold to Chase” was \$125,138.70 and the gain was \$36,669.07.

The only difference between the parties in this case is whether the sale to Chase was a sale by the individual partners of their partnership interests or was a sale by the partnership of some of the partnership assets subject to some of the liabilities. The petitioners contend that the Hatches sold their individual interests in the partnership, those interests were capital assets, and the entire gain was a capital gain only one-half of which would have to be reported as taxable income. The respondent has determined that the partnership sold some of its assets subject to some of its liabilities, some of the assets sold were capital assets, and some were not capital assets, with the result that the profit on those assets sold which were not capital assets is taxable in its entirety to the partners as a part of their distributive share of the net income of the partnership.

Each partner's interest in the partnership would

have a basis for gain to the partner, and if it was sold, the gain would be the difference between the amount realized and that basis, which gain would be income of the partner, not of the partnership, and would be a capital gain if the interest had been held long enough. *H. R. Smith*, 10 T.C. 398, aff'd. 173 Fed. (2d) 470, certiorari denied, ... U. S. . . . , (Oct. 10, 1949). Cf. *Joseph L. Merrill*, 9 T.C. 291, affirmed 173 Fed. (2d) 310. Likewise, each asset of the partnership would have a basis for computing gain or loss to the partnership, and upon the sale of any of those assets by the partnership the gain would be income to the partnership and would be the difference between the amount realized and the basis to the partnership. The gain on any of the assets which were capital assets held for a long enough period by the partnership would be a capital gain, whereas the gain from the sale of any of the assets which were not capital assets would not be a capital gain but would be ordinary income taxable in its entirety to the partnership. The total of the basis of the partnership assets to a partnership does not necessarily equal the total of the bases to the partners of their interests in that partnership at any given moment. See Regulations 111, Section 29.113(a)(13)-2. Here the stipulation would indicate that the cost basis was the same whether the sale was a sale of partnership assets or a sale of partners' interests in the partnership. However, the gain was computed on a partnership return as a gain from a sale by the partnership of some of its assets, and the Commissioner has so regarded it. Furthermore, it is not easy even to imagine what

part of the basis of each individual partner for his partnership interests would be applied against his share of the amount realized from the sale in question which involved some but not all of the partnership assets. No such method of computing a gain is authorized for federal tax purposes.

The stipulated facts show that the partners made no effort to sell and Chase did not buy their individual interests in the partnership or any part of those interests, but on the contrary, the subject of the sale was a part of the partnership assets subject to a part of the partnership liabilities. The partnership was not terminated by the sale. It retained some of its assets and the amount realized from the sale. Later it distributed its assets to the individual partners in liquidation. The sale was reported and the gain computed on the partnership return for its fiscal year as a partnership transaction and each individual partner merely reported on his separate return on a calendar year basis a part of the gain from the sale as a part of his distributive share of the net income of the partnership. The only change made by the Commissioner was to hold that a part of the gain was ordinary income rather than a capital gain. The stipulated facts do not support the petitioners' contention that the gain of the partnership should be taxed to the partners as capital gain upon the theory that they sold a portion of their partnership interests, which interests were capital assets. The Commissioner did not err.

Decisions will be entered for the respondent.

Served February 23, 1950.

The Tax Court of the United States

Docket No. 18482

ESTATE OF HERBERT B. HATCH, Deceased,
JUANITA O. HATCH, Executrix, and
AMERICAN TRUST CO., Executor,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

The petitioner filed a motion to vacate the decision entered in this proceeding on February 24, 1950, because the executor and executrix had been discharged as such on June 3, 1948, by a final decree of the court of probate in California. The decision was vacated on May 19, 1950, pending reappointment of the executor and executrix. A proper certificate was filed on December 19, 1950, showing that the executor and executrix had been again appointed and qualified. Therefore, pursuant to the determination of the Court, as set forth in its opinion promulgated February 23, 1950, it is

Ordered and Decided, that there is a deficiency in income tax of \$3,702.31 for the period January 1 to April 9, 1944.

[Seal] /s/ J. E. MURDOCK,
Judge.

Entered Dec. 28, 1950.

Served Dec. 20, 1950.

The Tax Court of the United States

Docket No. 18483

JUANITA O. HATCH,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

The decision entered in this proceeding on February 24, 1950, was vacated by grant of the petitioners' joint motion on May 19, 1950, upon a showing that the executor and executrix in the related proceeding at Docket No. 18482 had been discharged prior to the date of the decisions in these proceedings. A proper certificate was filed on December 19, 1950, in the proceedings at Docket No. 18482 showing that the executor and executrix had been again appointed and qualified. Therefore, pursuant to the determination of the Court, as set forth in its opinion promulgated February 23, 1950, it is

Ordered and Decided, that there is a deficiency in income tax of \$2,199.38 for the year 1944.

[Seal] /s/ J. E. MURDOCK,
Judge.

Entered Dec. 28, 1950.

Served Dec. 29, 1950.

The Tax Court of the United States

Docket No. 18485

HERBERT B. HATCH, JR.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

The decision entered in this proceeding on February 24, 1950, was vacated by grant of the petitioners' joint motion on May 19, 1950, upon a showing that the executor and executrix in the related proceeding at Docket No. 18482 had been discharged prior to the date of the decisions in these proceedings. A proper certificate was filed on December 19, 1950, in the proceeding at Docket No. 18482 showing that the executor and executrix had been again appointed and qualified. Therefore, pursuant to the determination of the Court, as set forth in its opinion promulgated February 23, 1950, it is

Ordered and Decided, that there is a deficiency in income tax of \$187.22 for the year 1944.

[Seal] /s/ J. E. MURDOCK,
Judge.

Entered Dec. 28, 1950.

Served Dec. 29, 1950.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 18482

ESTATE OF HERBERT B. HATCH, Deceased,
JUANITA O. HATCH, Executrix, and
AMERICAN TRUST CO., Executor,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

T. C. Docket No. 18483

JUANITA O. HATCH,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

T. C. Docket No. 18485

HERBERT B. HATCH, JR.,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW AND
ASSIGNMENT OF ERROR

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

Come now the Estate of Herbert B. Hatch, De-

ceased, Juanita O. Hatch, Executrix, and American Trust Co., Executor, and Juanita O. Hatch and Herbert B. Hatch, Jr., by their attorneys of record, and respectfully show:

I.

Jurisdiction and Venue

Petitioners file this petition pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code (28 U.S.C., Sections 1141, 1142).

The Court in which the review of these causes is sought is the United States Court of Appeals for the Ninth Circuit.

Herbert B. Hatch, deceased, and Petitioners Juanita O. Hatch, his wife, and Herbert B. Hatch, Jr., their son, were residents of Stockton, California, in 1944, and their Federal Income Tax returns for 1944 were filed with the Collector of Internal Revenue for the First District of California at San Francisco, California.

Juanita O. Hatch and American Trust Company are duly appointed Executrix and Executor, respectively, of the last Will of Herbert B. Hatch, by authority of letters testamentary issued by the Superior Court of the County of San Joaquin, State of California.

The places of residence of each Petitioner and the office of said Collector were, and are, within the territorial jurisdiction of the United States Court of Appeals for the Ninth Circuit.

The Respondent on review is the duly appointed, qualified, and acting Commissioner of Internal Revenue of the United States.

II.

Prior Proceedings

On February 20, 1948, the Commissioner of Internal Revenue determined a deficiency in Federal Income Tax against Herbert B. Hatch, deceased, for the taxable year from January 1, 1944, to April 9, 1944, in the amount of \$3,702.31; against Petitioner Juanita O. Hatch for the taxable year ended December 31, 1944, in the amount of \$2,199.38; and against Petitioner Herbert B. Hatch, Jr., for the taxable year ended December 31, 1944, in the amount of \$187.22, and sent a deficiency notice by registered mail to Petitioners, in accordance with the applicable provisions of the Internal Revenue Code.

Thereafter, each Petitioner on review duly and timely filed with the Tax Court of the United States appeals from the said determination of the Commissioner of Internal Revenue, and the Commissioner duly filed his answers to said Petitions, for Redetermination of the Deficiency. On joint motion therefor, the cases were thereafter consolidated for hearing and briefing, and were tried by the Tax Court of the United States on May 10, 1949, before the Honorable Ernest H. Van Fossan at San Francisco, California. All facts were stipulated on the trial and briefs were submitted by the parties.

On February 23, 1950, the Tax Court of the United States promulgated its Opinion in the proceedings, pursuant to which decision was entered on February 24, 1950.

On May 19, 1950, the Tax Court vacated the Decision for the proceedings, Docket Nos. 18482, 18483 and 18485, by grant of the petitioners' joint motion, upon a showing that the Executor and Executrix in the related proceeding at Docket No. 18482 had been discharged prior to the date of the decisions in these proceedings. A proper certificate was filed on December 19, 1950, in the proceeding at Docket No. 18482 showing that the Executor and Executrix had been again appointed and qualified.

On December 28, 1950, the Tax Court entered its Decisions that deficiencies in income tax were due as follows: Estate of Herbert B. Hatch, deceased; Juanita O. Hatch, Executrix, and American Trust Co., Executor, \$3,702.31 for the period January 1 to April 9, 1949; Juanita O. Hatch, \$2,199.38 for the year 1944, and Herbert B. Hatch, Jr., \$187.22 for the year 1944.

Nature of the Controversy

The question presented to the Tax Court of the United States was whether the Petitioners, as co-partners, sold their interests in the partnership known as Hatch Chevrolet Company, and hence, whether the income realized from such sale was taxable to them individually as income from the sale of capital assets under Section 117 of the Internal Revenue Code (26 U.S.C., Sec. 117). Petitioners so reported their respective shares of the gain realized on the sale and paid a tax on 50% thereof.

Respondent determined that the transaction was

the sale of assets of the partnership and that some of the assets sold were not capital assets, and hence that 100% of the income realized from the sale of some of such assets was taxable to each of the partners as ordinary income.

On December 1, 1942, Herbert B. Hatch, now deceased; Juanita O. Hatch, his wife, and Herbert B. Hatch, Jr., their son, all of Stockton, California, entered into a written agreement of co-partnership to engage in the business of selling, distributing, repairing and servicing motor vehicles and motor vehicle parts, both at wholesale and retail. The partnership operated as Hatch Chevrolet Co., under a franchise from the Chevrolet Motor Division, General Motors Corporation.

On February 16, 1944, an agreement was entered into between Herbert Brooks Hatch, Juanita Osborn Hatch and Herbert B. Hatch, Jr., as co-partners, as parties of the first part, and King M. Chase, party of the second part, by which the Hatches agreed to sell their interests in the partnership to Chase for the tentative sale price of \$175,229.51. Chase paid \$5,000.00 at the time of the agreement of sale and the transaction was escrowed until a complete inventory and appraisement could be taken. The financial statement attached to the agreement was not a financial statement of the partnership, but set up the tentative basis for determining the overall sales and purchase price, and did not include cash in bank, two automobiles and certain liabilities. On March 3, 1944, the partners delivered a bill of sale to Chase in which the con-

sideration was recited as \$161,807.77. Chase paid the balance due of \$156,807.77 by check dated March 3, 1944, to Herbert B. Hatch, Juanita O. Hatch and Herbert B. Hatch, Jr., co-partners.

The interests of the partners in the partnership which were sold to Chase had a total cost basis of \$125,138.70 and the gain on the sale was \$36,769.07. The assets of the partnership which were sold to Chase were not distributed in kind to the co-partners prior to the sale thereof. By checks drawn on the partnership account after June, 1944, proceeds of the sale were paid to the Estate of Herbert B. Hatch and to Juanita O. Hatch and Herbert B. Hatch, Jr.

Herbert B. Hatch died a resident of Stockton, California, on April 9, 1944, and Juanita O. Hatch and American Trust Co. were appointed Executrix and Executor, respectively, under his Last Will and Testament.

By an amended information return (Form 1065) for the fiscal year beginning July 1, 1943, and ending June 30, 1944, filed with the Collector of Internal Revenue for the First District of California on September 19, 1944, Hatch Chevrolet Co. reported ordinary net income of \$75,444.43 and a long-term capital gain, resulting from the sale of the business, of \$36,669.07. The income thus reported was allocated on the partnership return to the individual partners in proportion to their individual interests in the partnership.

An individual income tax return for the period beginning January 1, 1944, and ending April 9, 1944

(the date of death of Herbert B. Hatch), was filed by the Executors of the Estate of Herbert B. Hatch with the Collector of Internal Revenue for the First District of California on March 3, 1945. The return reported the decedent's share of the ordinary income of Hatch Chevrolet Co. in the amount of \$42,337.04 and a long-term capital gain of \$9,778.42, one-half of his proportionate share of the capital gain realized in the sale of the partnership interests.

Juanita O. Hatch by an individual income tax return for the year 1944 filed with the Collector of Internal Revenue for the First District of California on January 15, 1945, reported ordinary income from the partnership of Hatch Chevrolet Co. in the amount of \$27,431.85, and a long-term capital gain of \$7,089.35, one-half of her proportionate share of the capital gain realized in the sale of the partnership interests.

Herbert B. Hatch, Jr., by an individual income tax return for the year 1944, filed with the Collector of Internal Revenue for the First District of California on February 26, 1945, reported ordinary income from the partnership in the amount of \$5,675.54, and a long-term capital gain of \$1,466.77, one-half of his proportionate share of the capital gain realized in the sale of the partnership interests.

Respondent Commissioner, in the deficiency notices dated February 20, 1948, held that the transaction between the Petitioners and Chase constituted a sale by the partnership of assets held pursuant to its business and that Accounts Receivable and Inventories of New and Used Cars, Parts, Acces-

sories, Tires and Tubes and Miscellaneous Inventories were not capital assets under Section 117 of the Internal Revenue Code, and, therefore, that the gain realized thereon was not a long-term capital gain. Consequently, each of the Petitioners was charged by Respondent with a deficiency based on his failure to report and pay the tax on 100% of his share of the proceeds of the sale of these assets as ordinary income.

The Tax Court agreed with the determination of the Respondent, and in so doing erred:

1. In holding and deciding that the partners made no effort to sell, and Chase did not buy their individual interests in the partnership or any part of those interests.

2. In holding and deciding that the subject of the sale to Chase was merely a part of the partnership assets subject to a part of the partnership liabilities.

3. In holding and deciding that because the partnership distributed to the individual partners some of its assets and the amount realized from the sale, the gain realized from the sale should not be taxed to the partners as capital gains resulting from the sale of their partnership interests.

4. In holding and deciding that the gain was computed on the partnership return as a gain from a sale by the partnership of some of its assets, and that the part of the gain resulting from the sale

of assets which were not capital assets of the partnership, was ordinary income.

5. In holding and deciding that there is no method for Federal tax purposes of computing a capital gain to a partner for his partnership interest where the sale of the partnership interest involves some, but not all, of the partnership assets.

6. In failing to find, hold and decide that the sale to Chase of the assets of the partnership as a going business was not a sale by the partnership in the ordinary course of its business, but a sale by the individual Petitioners of their individual interests in the partnership, which were capital assets.

7. In that its opinion and decision are contrary to the uncontroverted evidence in this proceeding.

8. In that its opinion and decision in this proceeding are contrary to law.

Wherefore, Petitioners petition that the decision of the Tax Court of the United States be reviewed by the United States Court of Appeals for the Ninth Circuit, that a transcript of the record be prepared in accordance with law and rules of said Court and be transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

Respectfully submitted,

/s/ FREDERIC D. DASSORI,

Counsel for Petitioners on
Review.

City of Washington,
District of Columbia—ss.

Frederic D. Dassori, being first duly sworn, deposes and says that he is one of the attorneys of record for the Estate of Herbert B. Hatch, Juanita O. Hatch, Executrix, and American Trust Co., Executor, and for Juanita O. Hatch and Herbert B. Hatch, Jr., Petitioners in the foregoing Petition for Review, and that he has read said Petition and is familiar with the contents thereof; that said Petition is true of his own knowledge, except as to matters therein alleged upon information and belief and that as to these matters, he believes them to be true.

FREDERIC D. DASSORI.

Subscribed and sworn to before me, this 21st day of March, 1951.

[Seal] /s/ ETHNA WHITE,
Notary Public.

My commission expires Feb. 15, 1956.

Filed T.C.U.S. March 23, 1951.

United States Court of Appeals for the
Ninth Circuit

T. C. Docket Nos. 18482, 18483, and 18485.

[Title of Causes.]

NOTICE OF FILING PETITION ON REVIEW

To: Charles Oliphant, Esquire, Chief Counsel,
Bureau of Internal Revenue, Internal Revenue
Building, Washington, D. C., Attorney for Re-
spondent on Review.

You are hereby notified that the Estate of Herbert B. Hatch, Deceased, Juanita O. Hatch, Executrix, and American Trust Co., Executor; Juanita O. Hatch and Herbert B. Hatch, Jr., did on the 23rd day of March, 1951, file with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit, of the decision of the Tax Court of the United States heretofore rendered in the above styled causes. A copy of the petition for review, as filed, is hereto attached and served upon you.

Dated this 23rd day of March, 1951.

/s/ FREDERIC D. DASSORI,
Counsel for Petitioners on
Review.

Receipt of Copy acknowledged.

Filed T.C.U.S. March 23, 1951.

United States Court of Appeals for the
Ninth Circuit

T. C. Docket Nos. 18482, 18483, and 18485

[Title of Causes.]

STIPULATION FOR CONSOLIDATION ON
PETITION FOR REVIEW

The above-named petitioners and the respondent, each acting by and through their respective attorneys of record, hereby stipulate and agree as follows:

The above-styled and numbered causes shall be, and they are hereby, consolidated for the purposes of a review by the United States Court of Appeals for the Ninth Circuit of the decisions heretofore entered by the Tax Court of the United States in said causes, said review being taken at the instance of the petitioners. In all of the proceedings which the petitioners may take to obtain a review of said decisions, they may proceed as if there were only one cause and join said causes in one petition for review, and only one record, which record shall embrace all of the pertinent proceedings had in said consolidated causes.

This agreement and stipulation is entered into because said causes were consolidated for hearing and decision before the Tax Court of the United States and because said petitioners in Dockets Nos. 18483 and 18485 are mother and son, and the petitioner in Docket No. 18482 is the estate of their husband and father, all of the State of California,

and because said causes involve the same transaction and because the same proceedings and evidence in one of said causes is equally applicable to and pertinent to the others, and because said causes were disposed of by the Tax Court of the United States in one opinion.

Executed on behalf of the above-named parties by their attorneys of record this 23rd day of March, 1951.

/s/ FREDERIC D. DASSORI,
Attorney for Petitioners.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

Filed T.C.U.S. March 23, 1951.

In the United States Court of Appeals for the
Ninth Circuit

T. C. Docket Nos. 18482, 18483, and 18485

[Title of Causes.]

PRAECIPE FOR RECORD

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit copies duly certified as correct of the following documents and records in the above-entitled causes, in connection with the Petition for

Review by the said Court of Appeals for the Ninth Circuit, heretofore filed by the petitioners above named:

(1) Docket entries of the proceedings before the Tax Court of the United States.

(2) Pleadings in each of the above causes:

(a) Petition.

(b) Answer to Petition.

(3) Stipulation of Facts and Exhibits 1-A, 2-B, 3-C, 4-D and 5-E appended thereto.

(4) Opinion of the Tax Court promulgated February 23, 1950.

(5) Decisions of the Tax Court of the United States entered December 28, 1950.

(6) Petition for Review and Assignment of Error, together with Notice of Filing Petition on Review containing proof of service.

(7) Stipulation of the parties for consolidation on review.

(8) This praecipe.

Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Court of Appeals for the Ninth Circuit.

/s/ FREDERIC D. DASSORI,

Counsel for Petitioner on
Review.

Receipt of Copy acknowledged.

Filed T.C.U.S. May 1, 1951.

The Tax Court of the United States

Docket Nos. 18482 18483, and 18485

[Title of Causes.]

ORDER ENLARGING TIME

Upon motion of counsel for petitioner to which respondent interposes no objection, it is

Ordered that the time for preparation, transmission and delivery of the record sur petition for review of the above-entitled proceeding in the United States Court of Appeals for the Ninth Circuit is extended to June 21, 1951.

[Seal] /s/ JOHN W. KERN,
Chief Judge.

Dated: Washington, D. C., May 2, 1951.

Served May 4, 1951.

The Tax Court of the United States

Docket Nos. 18482, 18483, and 18485

[Title of Causes.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 19, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the Praecipe for

Record on Review in the proceedings before The Tax Court of the United States entitled, "Estate of Herbert B. Hatch, Dec'd., Juanita O. Hatch, Executrix, and American Trust Co., Executor, Petitioners, v. Commissioner of Internal Revenue, Respondent," Docket No. 18482; "Juanita O. Hatch, Petitioner, v. Commissioner of Internal Revenue, Respondent," Docket No. 18483 and "Herbert B. Hatch, Jr., Petitioner, v. Commissioner of Internal Revenue, Respondent," Docket No. 18485 and in which the petitioners in The Tax Court of the United States proceeding have initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 11th day of May, 1951.

[Seal] /s/ VICTOR S. MERSCH,

Clerk, The Tax Court of the
United States.

[Endorsed]: No. 12928. United States Circuit Court of Appeals for the Ninth Circuit. Estate of Herbert B. Hatch, deceased, Juanita O. Hatch, Executrix and American Trust Company, Executor; Juanita O. Hatch and Herbert B. Hatch, Jr., Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the Tax Court of the United States.

Filed May 14, 1951.

PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 12928

[Title of Cause.]

DESIGNATION AS TO PRINTING RECORD

Come Now the parties, by their attorney of record, and pursuant to Rule 19(6) of the Rules of the United States Court of Appeals for the Ninth Circuit, respectfully request that the entire record, as transmitted by the Clerk of the Tax Court, be printed in this case.

Respectfully submitted,

/s/ FREDERIC D. DASSORI,
Attorney for Petitioners.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 12, 1951.

United States Court of Appeals
for the Ninth Circuit

No. 12928

[Title of Cause.]

STATEMENT OF POINTS

Come Now the petitioners herein, by their attorney, Frederic D. Dassori, and hereby assert the following errors, which they intend to urge on review by the United States Court of Appeals for

the Ninth Circuit of the decisions of the Tax Court of the United States rendered in petitioners' causes in Tax Court Docket Numbers 18482, 18483 and 18485, on December 28, 1950:

1. The Tax Court erred in holding and deciding that petitioners, as co-partners, made no effort to sell, and King M. Chase did not buy their individual interests in the partnership or any part of those interests.

2. The Tax Court erred in holding and deciding that the subject of the sale to Chase was merely a part of the partnership assets subject to a part of the partnership liabilities.

3. The Tax Court erred in holding and deciding that the partnership distributed to the individual partners some of its assets and the amount realized from the sale, and the gain realized from the sale should not be taxed to the partners as capital gain resulting from the sale of their partnership interests.

4. The Tax Court erred in holding and deciding that the gain was computed on the partnership returns as a gain from a sale by the partnership of some of its assets, and that the part of the gain resulting from the sale of assets which were not capital assets of the partnership, was ordinary income.

5. The Tax Court erred in holding and deciding that there is no method for Federal Tax purposes of computing a capital gain to a partner for his

partnership interest where the sale of the partnership interest involves some, but not all of the partnership assets.

6. The Tax Court erred in failing to find, hold and decide that the sale to Chase of the assets of the partnership as a going business was not a sale by the partnership in the ordinary course of its business, but a sale by the individual petitioners of their individual interests in the partnership, which were capital assets.

7. The Tax Court erred in that its opinion and decisions are contrary to the uncontroverted evidence in these proceedings.

8. The Tax Court erred in that its opinion and decisions in these proceedings are contrary to law.

Respectfully submitted,

FREDERIC D. DASSORI,
Attorney for Petitioners.

Service of Copy acknowledged.

[Endorsed]: Filed June 12, 1951.

